

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROBERTO DURAND,

Plaintiff,

v.

RUEBUART, *et al.*,

Defendants.

Case No. 3:21-cv-00415-MMD-WGC

ORDER

On September 15, 2021, this Court issued an order directing Plaintiff Roberto Durand to file a fully complete application to proceed *in forma pauperis* ("IFP Application") or pay the full \$402 filing fee on or before November 15, 2021. (ECF No. 3.) On September 21, 2021, Durand submitted a second incomplete IFP Application that again did not contain an inmate account statement for the previous six-month period. (ECF No. 4.) The November 15, 2021, deadline has now expired, and Durand has not filed a fully complete IFP Application or paid the full \$402 filing fee.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to

1 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address);  
2 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for  
3 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.  
4 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey  
6 a court order, or failure to comply with local rules, the Court must consider several factors:  
7 (1) the public's interest in the expeditious resolution of litigation; (2) the Court's need to  
8 manage its docket; (3) the risk of prejudice to Defendants; (4) the public policy favoring  
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
10 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at  
11 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 Here, the Court finds that the first two factors, the public's interest in expeditiously  
13 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
14 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
15 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
16 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
17 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
18 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
19 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
20 the court's order will result in dismissal satisfies the "consideration of alternatives"  
21 requirement. See *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779  
22 F.2d at 1424. The Court's order requiring Durand to file a fully complete IFP Application  
23 or pay the full \$402 filing fee on or before November 15, 2021, expressly stated: "IT IS  
24 FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed  
25 *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action  
26 on or before November 15, 2021, this case will be subject to dismissal without prejudice

1 for Plaintiff to refile the case with the Court, under a new case number, when Plaintiff is  
2 has all three documents needed to file a complete application to proceed *in forma*  
3 *pauperis* or pays the the full \$402 filing fee.” (ECF No. 3 at 3.) Thus, Durand had adequate  
4 warning that dismissal would result from noncompliance with the Court’s order.

5 It is therefore ordered that this case is dismissed without prejudice based on  
6 Durand’s failure to file a fully complete application to proceed *in forma pauperis* or pay  
7 the full \$402 filing fee in compliance with this Court’s order. (ECF No. 3.)

8 It is further ordered that Durand's pending motion (ECF No. 4) is denied as moot.

9 The Clerk of Court is directed to close the case and enter judgment accordingly.  
10 No other documents may be filed in this now-closed case.

11 DATED THIS 24<sup>th</sup> Day of November 2021.

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14 MIRANDA M. DU  
15 CHIEF UNITED STATES DISTRICT JUDGE  
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